



Building Department

5/19/08  
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**TOWN OF ACTON**  
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**INTERDEPARTMENTAL COMMUNICATION**

**To:** Steven Ledoux, Town Manager **Date:** April 23, 2008

**From:** Roland Bartl, AICP, Planning Director *R.B.*

**Subject:** **2008 Class I and II License Renewals – 56 & 60 Powder Mill Road**  
**Site Plan Amendment Request – 60 Powder Mill Road (#2/19/03-388)**

**3/31/08 letter from Mark T. Donohoe of Acton Survey & Engineering on behalf of Autoplex Realty, LLC (Bertolami)**

I reviewed Mr. Donohoe's letter (AS&E, Inc., 3/31/08) submitted on behalf of Autoplex Realty, LLC.

It appears that it is time to make a decision in this matter. Nothing really new has come to the fore here. The proposed marking of a fire lane area on the lot at 60 P.M. Rd. in lieu of a fire lane/ramp connection to the neighboring lot (56 P.M. Rd.) documents room for backing up fire engines on the site. Whether backing up engines during an emergency situation is practical or desirable is for the Fire Chief to determine. The proposed added fire hydrant is perhaps very useful – again I defer to the Fire Chief. But, it does not seem to address the issue of connecting driveway and emergency/fire lane that has been debated for the last year or so, and perhaps even longer.

The Site Plan Special Permit as it stands right now requires a ramp as the connecting driveway and emergency/fire lane. The applicant did not appeal it at that time. At some point 2 or so years ago, I recall a meeting with the applicant, his engineer and attorney, the Fire Chief, the Building Commissioner and possibly others, where we all agreed on how the ramp would be installed. The only thing different today is a change in business name for the abutting property at 56 P.M. Rd. although it is still under the ownership of the applicant.

Under the Site Plan Special Permit authority bestowed on the Board of Selectmen by the Zoning Bylaw, the Board has the right and obligation to ensure that a site plan as approved meets certain standards. Some of them are set out in the Zoning Bylaw – black and white. Other standards are more in the grey zone where the Zoning Bylaw defers the judgment calls to the Board of Selectmen sometimes involving compromises between the ideal and the doable. In approving a Site Plan (and of course including any amendment or waiver of previous requirements) the Board of Selectmen, quoting the Zoning Bylaw, section 10.4.5:

“.... shall give due consideration to the reports received under section 10.3.3 (*Reports from Town Boards and Agencies*). Prior to the granting of any (*site plan*) special permit, the Board of Selectmen shall find that, to the degree reasonable, the site plan:

- 10.4.5.1 Is consistent with the Master Plan.
- 10.4.5.2 Protects the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.
- 10.4.5.3 Provides for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation, including emergency vehicles, on or adjoining the site.
- 10.4.5.4 Provides an adequate arrangement of parking and loading spaces in relation to the proposed USES of the premises.
- 10.4.5.5 Provides adequate methods of disposal of refuse or other wastes resulting from the USES permitted on the site.
- 10.4.5.6 Will not derogate from the intent of this Bylaw to limit the adverse effects of the USE and development of land on the surface and groundwater resources of the Town of Acton. If a proposed USE has obtained a special permit from the Planning Board under Section 4.3 of this Bylaw, the requirement of this Section shall be deemed to have been met.
- 10.4.5.7 Complies with all applicable requirements of this Bylaw."

I have underlined three phrases that struck me as particularly relevant for the question at hand. For some history I attached my more recent memos on the subject.

cc: Fire Chief  
Mr. Bertolami  
Mr. Donohoe

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**MEMORANDUM**

**To:** Steven Ledoux

**Date:** February 25, 2008

**From:** Roland Bartl, AICP, Planning Director

**Subject:** 60 Powder Mill Road – Site Plan #388  
– Class I License (Acton Suzuki Inc.)

The owner is seeking a site plan amendment to allow the site to remain as shown on the most recent as-built plan. The major outstanding issue is the fire lane/driveway ramp connection to 56 Powder Mill. This is a requirement of the Site plan special permit, and the Fire Chief does not recommend waiving it. The owner, however, wishes to bring in the State Fire Marshall in on this matter, which will take some time. There is agreement with the owner for the following:

**Summary Recommendation**

1. Extend the temporary Class I license to April 30, 2008.
2. Revisit the matter for final resolution at the next Board meeting on April 28, 2008, 7:30 PM.



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**MEMORANDUM**

**To:** Steven Ledoux

**Date:** February 25, 2008

**From:** Roland Bartl, AICP, Planning Director

**Subject:** 56 Powder Mill Road – Class I License (Acton Ford Rent a Car)

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The one compliance matter outstanding from previous license conditions deals with the landscaping areas around the “doll house” and at the easterly driveway as represented originally on a 2002 plan. This is not an issue of great significance for staff – nice to have, but not required. This is strictly a previous a license requirement. There is no site plan governing this site.

**Summary Recommendation**

The Board could grant the Class I dealer license for 2008 with or without the required landscaping as the Board sees most appropriate.



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**INTERDEPARTMENTAL COMMUNICATION**

**To:** John Murray, Temporary Town Manager **Date:** February 19, 2008

**From:** Roland Bartl, AICP, Planning Director

**Subject:** 2008 Class I and II License Renewals – 56 & 60 Powder Mill Road  
Site Plan Amendment Request – 60 Powder Mill Road (#2/19/03-388)

2/12/08 letter from Mark T. Donohoe of Acton Survey & Engineering on behalf  
of Autoplex Realty, LLC (Bertolami)

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The letter delineates several requests to the Board of Selectmen for an amendment of the site plan as previously approved:

**Flood Plain Compensation**

This work is done and staff is okay with it. The flood storage calculations have been provided. They indicate that the site is in compliance.

**Landscape at Western Wall**

Staff has no problem with the owner's choice in this matter.

**Connection of Parking**

I have previously tabulated the decision history on this subject. The letter summarizes it correctly. The Fire Chief has made clear his preference for a connection between #56 and #60 Powder Mill Road that is suitable for use by fire apparatus. Parking regulations for the Powder Mill District call for common driveway connections between sites unless the special permit granting authority (SPGA) finds that physical constraints, present site configuration, uncooperative abutters, or land vacancy preclude strict compliance. In such cases the site must be laid out to accommodate the future construction of a common driveway (ZBL, section 6.9.6.2).

Acton Survey & Engineering has designed a ramp connection that would meet fire apparatus access needs. The grade differential between #56 and #60 Powder Mill Road is largely the result of the recently completed development of the Suzuki dealership site at #60 Powder Mill Road. There was very little grade difference before. The driveway ramp as designed for fire apparatus would extend 20 feet into the paved area on #56 Powder Mill Road, which is about the length of a parking stall (18.5 feet). On previous site visits, vehicles were parked along that side of #56. The ramps would eliminate about two spaces. The ramp would line up with the driveway space around the back of the "doll house". The request before the Board is to find that one or more of the conditions exist that would justify waiving the construction of the driveway connection at this time, and to simply set aside an area for future connection.

**Bollard**

The arrangements made in place of the bollard are acceptable.

**DEP filing for Certificate of Approval**

No comment.

**Site Plan Amend Plan**

The letter itemizes the specific requests for a site plan amendment. The original site plan special permit has so far been red-lined once, and amended twice.

Pursuant to section 5.12 of the Rules and Regulations for Site Plan Special Permits, the Board may amend a previously granted permit by written request to the Board or on its own motion. It must determine if the proposed changes are minor or major. The Board can approve changes without a hearing if it deems them minor, not significant to the public interest, and consistent with the purpose and intent of the Bylaw. In the alternative, the Board can require a full application and hearing. It seems to me that any of the listed items would reasonably fall into the 'minor' category if the Board wishes to entertain them.

**Regarding the landscaping around the doll house on #56 Powder Mill Road:**

This is a requirement of the dealer license issued in 2007, not part of the site plan special permit for #60 Powder Mill Road. This has not been done. The matter is not addressed in the 2/12/08 letter. It is my understanding that the owner is seeking reversal of the previous license requirement or at least a reduction of the required landscaping. No specific alternative plans have been presented.

cc: Fire Chief  
Mr. Bertolami  
Mr. Donohoe

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**INTERDEPARTMENTAL COMMUNICATION**

**To:** John Murray, Temporary Town Manager **Date:** January 25, 2008  
**From:** Roland Bartl, AICP, Planning Director  
**Subject:** **2008 Class I and II License Renewals – 56 & 60 Powder Mill Road  
Site Plan Amendment Request – 60 Powder Mill Road (#2/19/03-388)**

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**Attachments:**

- Letter from AS&E, dated 1/22/08 formally requesting a site plan special permit amendment.
  - Letter from AS&E, dated 1/17/08 discussing the current conditions on the site.
  - Site Conditions Plan, dated 1/15/08.
  - Photographs (2) submitted by Mr. Bertolami showing attempt at temporarily correcting the pavement markings in the parking lot to conform to approved plan.
  - Photographs taken by Acton Police during January '08 of both, 60 and 56 Powder Mill Road sites.
  - Site Plan Special Permit #02/19/03-388 – 2<sup>nd</sup> Amendment of Decision, dated 7/17/07.
  - "Site Plan Amend Plan", dated 2/17/07, last revised 5/17/07, showing the site plan as approved in the 2<sup>nd</sup> Amendment of Decision.
  - Memo from Engineering Department, dated 1/25/08.
  - E-mail memo from Fire Chief dated 1/25/08, with attachment dated 3/12/07.
  - IDC on this subject, dated 12/3/07.
  - Letter to Mr. Bertolami, dated 12/21/07.
  - "Rental Plan" dated February 2002.
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**60 Powder Mill Road (Suzuki Dealership – Autoplex Realty, LLC)**

I visited the site today. See also pictures taken by Police Department between 1/4/08 and 1/22/08.

Mr. Bertolami, through his engineering firm Acton Survey & Engineering, Inc., has filed for another site plan amendment to seek relief from several previous permit conditions. The original permit has so far been red-lined once, and amended twice.

Pursuant to section 5.12 of the Rules and Regulations for Site Plan Special Permits, the Board may amend a previously granted permit by written request to the Board or on its own motion. It must determine if the proposed changes are minor or major. The Board can approve changes without a hearing if it deems them minor, not significant to the public interest, and consistent with the purpose and intent of the Bylaw. In the alternative, the Board can require a full application and hearing. It seems to me that any of the remaining items would reasonably fall into the 'minor' category if the Board wishes to entertain them.

Observations on 1/24/08 on conditioned items in 2<sup>nd</sup> amendment (by paragraph # in 2<sup>nd</sup> amendment decision) – see also Police Department pictures:

7. Number, layout and allocation of parking spaces -

To the best that I can determine, the site's parking lot is used, and vehicles are arranged in a manner as required. As you might recall, the distinction between exterior dealer spaces and exterior employee and demonstrator spaces is fuzzy at best. Customer spaces were as required, and either vacant or occupied by customer vehicles. There were several customers at the time. Pavement markings and signage are temporarily in compliance. Since my report in early December, the owner has made attempts at temporarily correcting the pavement markings (pictures attached), removed certain signs from their posts, and placed other signs in buckets. This needs to be finalized as soon as weather conditions are more favorable. Mr. Bertolami has not requested an amendment in these matters.

8. Vehicles associated with business at 50-56 Powder Mill Road (#56 is now Ford Rent-a-Car or Fleet/Lease) not allowed on 60 Powder Mill Road:  
None apparent

9. Vehicles associated with business at 60 Powder Mill Road not allowed on 50-56 Powder Mill Road:  
None apparent. Site was nearly void of vehicles. No Suzuki vehicles.

10. Sidewalk to rear doors:  
Installed as shown on amended plan.

11. Decorative metal fence:  
Installed.

12. Bollard at northeast corner of building:  
Not installed. The decorative metal fence opening is narrowed instead. Mr. Bertolami is seeking a site plan amendment to waive this requirement.

13. Landscaping on westerly side of property to be relocated from foot of retaining wall to property line:  
Not done. Mr. Bertolami is seeking a site plan amendment to waive this requirement.

14. Ramp/driveway connection to 56 Powder Mill Road as required in 2<sup>nd</sup> amendment:  
Not installed. Mr. Bertolami is seeking a site plan amendment to waive this requirement. The 1/17/08 letter from AS&E states that the now constructed retaining wall at 60 Powder Mill Road poses a constraint that prohibits the connection to the parking lot at 56 Powder Mill Road. The zoning bylaw generally seeks to link commercial properties with off-street connections such as in section 6.9.6.2, which applies to the Powder Mill zoning district. The Board can waive the connection requirement due to physical constraints, present site configurations, uncooperative abutters, or land vacancies, in which case it must require provisions for a future connection to be made. However no such impediments existed at the time of the original application. The original site plan filed in 2003 showed a workable connection and the plan was approved as such. The only "impediment" today is that the applicant chose not to build it, and now wishes not to have to build it. I also note that the original site plan shows underlying grades with a two-foot differential between the two sites, whereas the site plan as proposed raised the grade of the parking lot at 60 Powder Mill Road by one foot bringing the difference to three feet. It is unclear from this vantage point, if this was necessary. Nevertheless, the plan showed the driveway connection as the bylaw requires.

15. All aforesaid work to be completed by November 15, 2007:  
It is now January 2008.



16. As-built plan within 30 days after completion of work:

Site Conditions Plan, dated 1/15/08 received on 1/17/08 with explanation of discrepancies, followed by formal request for site plan amendment to receive approval of site as is, except that Mr. Bertolami stated his intention to bring the parking lot pavement striping and signage into compliance with the previously approved plan as soon as the weather permits.

There are a few changes (essentially landscaping changes) from the previously approved plan that were made in an effort to re-grade the property for compliance with flood plain regulations – see AS&E letter of 1/17/08 making reference to work in southwest corner and placement of fieldstone wall, which I noted as a decorative low-profile addition in the front yard.

Also, with respect to the fence separating the business use area from the conservation restricted area and the restoration of the conservation restricted area, the Conservation Commission has signed off on the completed work. I have reported on that under separate cover with a request for authorization to release the bond held for this item.

**56 Powder Mill Road (Acton Ford Rent-a-Car, Inc./Fleet Lease)**

I visited the site today, also. The site appeared essentially vacant. There were perhaps two vehicles with license plates parked in the rear. Neither of them seemed particularly new. Otherwise, there were no changes from my previous report in early December.

Mr. Bertolami, through his engineering firm Acton Survey & Engineering, Inc. (letter of 1/17/08), appears to be requesting relief from the previous license conditions that required landscaping around the building and at the southeast corner of the lot, shown as future landscaping on the "Rental Plan" dated February 2002.

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December 21, 2007

Leo Bertolami  
Acton Suzuki, Inc.  
60 Powder Mill Road  
Acton, MA 01720

**RE: 56 & 60 Powder Mill Road, Acton**

Dear Mr. Bertolami:

The Fire Chief, Bob Craig, and I met with you on December 12, 2007 at your Suzuki location at 60 Powdermill Road. Background of the conversation was uncompleted site plan work, unfulfilled auto dealer license terms and conditions, and upcoming expiration/renewal dates for your dealer licenses at 56 and 60 Powder Mill Road. In particular, we discussed the ramp/driveway connection between 60 Powder Mill Road, your Suzuki dealership, and 56 Powder Mill Road, your adjacent rental car business (Ford and/or Suzuki at various times).

The essence of the meeting:

- The ramp/driveway connection is a required element of the site plan special permit 02/19/03-388 as most recently amended in a "Second Amendment of Decision" filed with the Town Clerk on July 17, 2007.
- Said Second Amendment requires the completion of all work by November 15, 2007.
- The ramp is not installed at this time.
- You contend that the ramp/driveway connection is not practical now since it allegedly obstructs operations at 56 Powder Mill Road. I reviewed the plans and concluded that this was not the case.
- You contended that the ramp/driveway connection was only required because the businesses on the two sites were affiliated under Suzuki – rental and/or leasing at #56 and sales at #60. Now, you declared that Suzuki rental has been discontinued at #56 and the business is now Acton Ford rent-a-car. I stated my opinion that driveway connections between businesses are useful even if businesses are different, and observed that the Town has commercial driveway connections in other locations between vastly different types of businesses and various owners. At the time of our visit, new Suzuki vehicles were parked at 56 Powder Mill Road.

- You contended that the ramp/driveway connection serves no emergency/fire safety purpose. The Fire Chief disagreed and did not believe it was appropriate to discuss hypothetical fire scenarios and possible emergency response strategies to those hypotheticals. He observed that the ramp/driveway connection can serve a useful emergency purpose in some situations.
- We agreed that any further amendment of the plan would require approval of a site plan special permit amendment, which is at the discretion of the Acton Board of Selectmen.
- I mentioned the still missing landscaping at the driveway and building at 56 Powder Mill Road, the completion of which was a requirement of a previous dealer license issued to you for this site. You observed that installing it would render the site less practical or useless for the car rental business.
- You stated that, if you really had to build the ramp/driveway connection between 56 and 60 Powder Mill Road and/or install the landscaping at #56, you would consider razing the building at 56 Powder Mill Road. You pointed out to us that the building is on the Acton historic register, that you recently renovated it, that the Historical Commission surely would not like its demolition, that you are aware of the Demolition delay bylaw, and that you could simply wait out the 6-month or so time period stated therein. You stated your expectation of public controversy in this regard. The Fire Chief and I observed that that is certainly an action you could pursue if you wish.
- You asked me and I agreed to review the site plan special permit file #02/19/03-388 to ascertain, starting from the date of the original site plan special permit in 2003 through its various amendments, when the ramp/driveway connection to 56 Powder Mill Road was part of the required site improvements and when it was not. The resulting chronology is provided in the following.

Plan of 2/19/03, rev. 5/11/03	Shows ramp/driveway connection	
Decision dated <b>6/23/03</b>	Approves previous plan with conditions	<b>Connection is required as shown on plan</b>
"Red Line Revisions" approved with conditions on <b>12/19/05</b> in response to plan dated 11/18/05	11/18/05 plan states: "connector ramp not to be installed at this time – place construction joints in wall to allow future removal of section required for 14' wide ramp". Reasons given in AS&E letter dated 11/18/05: * Dealer at #56 does not want it * Vehicles will not travel between properties * Fire has indicated it is not necessary (there is no memo from Fire Chief in file that would corroborate this).	<b>Connection is <u>not</u> required</b>
Decision Amendment filed 9/26/06	No change to ramp/driveway connection status	<b>Connection is <u>not</u> required</b>

Revised plan submitted, dated 2/17/07, last revised 5/17/07	plan shows revised ramp/driveway connection with detail	
Second Amendment to Decision filed on 7/17/07 in response to 5/17/07 plan submission	Approves revised plan with conditions	<b>Connection is required as shown on plan</b>

Regards,

Roland Bartl, AICP  
Planning Director

cc: Robert Craig  
John Murray  
Francis Ramsbottom

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